

Hearing Date and Time: January 18, 2019 at 10:00 a.m. EST

Response Date and Time: January 11, 2019 at 4:00 p.m. EST

**FOLEY & LARDNER LLP**

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*Counsel to Briggs & Stratton Corporation*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re:	:	Chapter 11
	:	
Sears Holdings Corporation, et al.,	:	Case No. 18-23538-rdd
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**NOTICE OF MOTION OF BRIGGS & STRATTON CORPORATION  
FOR ALLOWANCE AND IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE  
CLAIM PURSUANT TO 11 U.S.C. § 503(b)(9)**

**TO THE DEBTORS AND ALL INTERESTED PARTIES:**

**PLEASE TAKE NOTICE** that a hearing is scheduled for January 18, 2019, at 10 a.m.  
on the *Motion of Briggs & Stratton Corporation for Allowance and Immediate Payment of  
Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(9)* (the “**Motion**”), seeking entry  
of an order allowing and directing Sears Holdings Corporation (“**Sears Holdings**”) to

immediately pay an administrative expense claim for goods sold to and received by Sears Holdings within 20 days before the filing of Sears Holdings' bankruptcy petition.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Southern District of New York, shall set forth the name of the objecting party, the basis for the objection and the specific grounds thereof, shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 and shall be served upon (i) the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, NY 10601-4140; (ii) BECK, CHAET, BAMBERGER & POLSKY, S.C., 330 East Kilbourn Avenue, Tower 2, Suite 1085, Milwaukee, Wisconsin 53202-3170, Attn: Kevin Keeler, attorney for BRIGGS & STRATTON CORPORATION; and (iii) FOLEY & LARDNER LLP, 90 Park Avenue, New York, New York 10016, Attn: Richard J. Bernard, Esq., local counsel for BRIGGS & STRATTON CORPORATION, so as to be so filed and received no later than **January 11, 2019 at 4:00 p.m. (Eastern Time)** (the "**Objection Deadline**").

**PLEASE TAKE NOTICE** that if no objections are timely filed and served with respect to the Motion, Briggs may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

Dated this 20 day of December, 2018.

FOLEY & LARDNER LLP

/s/Richard J. Bernard, Esq.

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Sears Holdings Corporation, et al.,	:	Case No. 18-23538-rdd
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**MOTION OF BRIGGS & STRATTON CORPORATION  
FOR ALLOWANCE AND IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE  
CLAIM PURSUANT TO 11 U.S.C. § 503(b)(9)**

Briggs & Stratton Corporation (“**Briggs**”), by and through its undersigned counsel, hereby moves the Court for the entry of an order, pursuant to Section 503(b)(9) of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”) allowing Briggs an administrative expense claim in the amount of \$336,243.46 and directing the immediate payment thereof to Briggs. In support of its Motion, Briggs states as follows:

## **JURISDICTION**

1. On October 15, 2018 (the “**Petition Date**”), Sears Holdings Corporation (“**Sears Holdings**”) and each of its related debtor affiliates (collectively, the “**Debtors**”), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

2. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

3. Briggs is a manufacturer of small engines, pressure washers, portable generators, and related parts and accessories. Prior to the Petition Date, Briggs regularly sold various of these products to Sears Holdings.

4. In the twenty (20) days preceding the Petition Date, Sears Holdings received goods that Briggs sold on credit to Sears Holdings in the ordinary course of Sears Holdings’ business. Such goods included pressure washers, portable generators, and related parts and accessories (the “**20 Day Goods**”) and had an aggregate value of and invoiced in the amount of \$336,243.46, as identified on the spreadsheet summary attached hereto as Exhibit A and the invoices, bills of lading and purchase orders attached hereto as Exhibit B.

5. As of the date of this Motion, Briggs has not received payment for the 20 Day Goods.

### **RELIEF REQUESTED**

6. Briggs requests that this Court allow Briggs' administrative expense claim in the amount of \$336,243.46 for the 20 Day Goods pursuant to Section 503(b)(9) of the Bankruptcy Code and direct Sears Holdings to immediately pay such amount to Briggs.

### **BASIS FOR RELIEF**

7. Section 503(b)(9) of the Bankruptcy Code provides, in pertinent part, that after notice and a hearing, there shall be allowed administrative expenses for "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9).

8. As evidenced by the spreadsheet summary attached hereto as Exhibit A, the documentation attached hereto as Exhibit B, during the 20 days preceding the Petition Date, Sears Holdings received from Briggs the 20 Day Goods, which were valued at \$336,243.46 in total.

9. Briggs sold the 20 Day Goods to Sears Holdings on credit in the ordinary course of Sears Holdings' business, and Briggs has not yet received payment for the 20 Day Goods. Briggs is therefore entitled to an allowed administrative expense claim against Sears Holdings in the aggregate amount of \$336,243.46.

10. Briggs reserves its right to assert claims against Sears Holdings for amounts not contemplated by this Motion or allowed by the Court pursuant to Section 503(b)(9) of the Bankruptcy Code and to amend, modify and/or supplement this request, as appropriate under the circumstances.

WHEREFORE, Briggs respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit C: (i) allowing Briggs' administrative expense claim in the amount of \$336,243.46 pursuant to Section 503(b)(9) of the Bankruptcy Code, (ii) directing Sears Holdings to immediately pay such amount to Briggs, and (iii) granting such other and further relief as may be just and proper under the circumstances.

Dated this 20th day of December, 2018.

FOLEY & LARDNER LLP

/s/ Richard J. Bernard, Esq.

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**EXHIBIT A**

**Spreadsheet Summary of 20 Day Goods**

(See Attached)



**EXHIBIT B**

**Invoices, Bills of Lading and Purchase Orders for 20 Day Goods**

(See Attached)

**EXHIBIT C**

**Proposed Order**

(See Attached)